



Investigations into Deaths in Custody and Use-of-Force Incidents

Fiscal Year 2018 Report to Congress



Homeland
Security

U.S. Customs and Border Protection

Message from the Deputy Commissioner of CBP

March 20, 2019

I respectfully submit “Investigations into Deaths in Custody and Use-of-Force Incidents,” prepared by U.S. Customs and Border Protection (CBP).

This report discusses the status or results of ongoing investigations into the death of individuals in CBP custody or the death of any individual subsequent to the use of force by CBP personnel.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Lucille Roybal-Allard
Chairwoman, House Appropriations Subcommittee on Homeland Security

The Honorable Chuck Fleischmann
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore-Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001.



Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'R. Perez'.

Robert E. Perez
Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

The use of force by law enforcement agencies and the treatment and care of individuals in custody are matters of intense scrutiny. How, when and why agencies use force and their standards on transport, escort, and detention are critical elements in maintaining and promoting the public trust. CBP takes its law enforcement responsibilities very seriously.

In recent years, CBP has focused significant attention on measures to promote accountability and transparency. We have implemented policy changes, revamped our training, acquired new equipment, stood up new review protocols and processes, and expedited the disclosure of basic incident information to the public. These actions are critical to achieving our mission and ensuring the trust of the American people.

In FY 2017 and FY 2018, CBP reports eight total deaths resulting from use of force by CBP law enforcement personnel. Four deaths occurred each fiscal year.

In FY 2017 and FY 2018, CBP reports four deaths in custody occurring in FY 2017 and six in FY 2018. Additionally, in FY 2018 there were 12 deaths recorded that were related to distress and rescue calls wherein CBP provided immediate life saving measures, but ultimately resolved in the death of the person.

Further information concerning both categories of are detailed within this report.



Investigations into Deaths in Custody and Use-of-Force Incidents

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I. Background

U.S. Customs and Border Protection (CBP) enforces U.S. laws and regulations enacted to secure our borders and facilitate lawful trade and travel. In an effort to secure our borders, U.S. Border Patrol (USBP) agents, Office of Field Operations (OFO) CBP officers, and Air and Marine (AMO) agents often engage in enforcement and regulatory actions targeting potential terrorists, illegal drug and human traffickers, and others intent on committing criminal acts. CBP is the largest law enforcement agency in the United States and is deployed along the borders and at air, land, and sea ports of entry. On a typical day, CBP will process over one million passengers and pedestrians for entry into the United States; apprehend over 850 individuals attempting to enter the United States illegally; encounter over 590 inadmissible persons; seize over 5,860 pounds of narcotics; identify over 1,600 individuals with suspected national security concerns; and arrest 21 wanted criminals at U.S. ports of entry.

CBP is charged with enforcing the nation's laws while protecting the privacy, civil rights and civil liberties of every individual with whom we interact. CBP's authority to enforce the law, even to the point of lethal force, appropriately bears the burden of accountability, which includes integrity and transparency.

Deaths in Custody

In FY 2017, CBP reports four deaths in custody. Of those, three were related to cardiac arrest and one was related to a seizure. In FY 2018, CBP reports six deaths in custody; two were cardiac arrests, one was a respiratory illness, one heat/dehydration illness, and two were suicides. Additionally, in FY 2018 there were 12 deaths recorded by CBP related to distress and rescue calls wherein CBP provided immediate life saving measures, but ultimately resolved in the death of the person. Of those 12 deaths, three were cardiac arrests, three were heat/dehydration illnesses, one was hypothermia, and five were of unknown medical causes.

In December 2018, CBP formalized and publicly released "*Interim Procedures on Notification of a Death in Custody*." These procedures capture CBP's commitment to be accessible and transparent by providing appropriate information to the Congress and the public regarding any death occurring in custody and to secure and maintain the public trust. CBP's procedures are specific in outlining the required response from its offices, and the required notifications to ensure accountability and oversight when an in-custody death occurs.

CBP's Office of Professional Responsibility (OPR), upon notification of a death, will make proper notification to the Department of Homeland Security Office of Inspector General (OIG) for independent review and assessment. If the OIG elects not to investigate the incident, OPR will immediately initiate a review into the circumstances surrounding the death of a detainee and take all appropriate investigatory actions.

CBP personnel are committed to treating everyone they encounter with professionalism, dignity, and respect while enforcing our Nation's laws. CBP remains committed to earning and maintaining the public's trust through accountability and transparency within the law.

Use of Force Incidents

CBP first published its use of force policy in May 2014 and a Use of Force statistics webpage in October 2015. Furthering CBP's commitment to transparency, CBP updates the Use of Force data on a monthly basis, which includes a breakdown by Sector, Field Office, and Air and Marine region. Additionally, CBP has posted the outcomes of the cases reviewed by the National Use of Force Review Board (NUFRB) as they become available for release.

CBP reports four deaths in FY 2017 and four deaths in FY 2018 as the result of use of force by CBP law enforcement personnel.

II. Ongoing Investigations

Historically, deaths of individuals in CBP custody not involving use of force, such as those at CBP short-term holding facilities, were routinely investigated by state and local authorities or the OIG. These types of deaths have generally involved a pre-existing medical condition or suicide. Local authorities, such as coroners or medical examiners, typically have more appropriate resources to determine the cause of death and to conduct comprehensive investigation.

As part of CBP's commitment to increase transparency and accountability regarding deaths of individuals in CBP custody, CBP implemented new agency-wide policy and procedures to ensure timely notification to the public and Congress of any death occurring in custody and to safeguard prompt and appropriate level of investigation concerning the death.

Pursuant to the enhanced CBP notification procedures, if an individual dies while held in CBP custody, CBP notifies multiple offices in the Department of Homeland Security (DHS), including the Office of the Secretary and the Office for Civil Rights and Civil Liberties. CBP also provides Congressional notifications through its Office of Congressional Affairs. In addition to direct reporting to the CBP Sector Chief Patrol Agent, CBP Director of Field Operations (OFO), or AMO Regional Executive for the area of responsibility (AOR) where the death occurred, CBP immediately notifies CBP OPR and Privacy and Diversity Office (PDO).

In support of CBP's commitment to improve reporting and heighten awareness, OPR has augmented response protocols for critical incidents. OPR Investigative Operations Division (IOD) Special Agents deploy to any incident that involves the death of an individual held in custody by CBP, or held in custody by another agency on behalf of CBP. Moreover, to increase CBP's visibility, IOD Special Agents deploy in response to any incident, regardless of custody, whereby an individual is seriously injured or killed as the result of an attempt to flee or otherwise evade contact with CBP, including, but not limited to vehicle and foot pursuits.

Whether misconduct by the CBP employee(s) or contractor(s) involved is alleged, a rapid response and judicious review by OPR is warranted, due to the loss of human life or serious injury. A mobilized response ensures that OPR obtains information first-hand, observes and collects relevant evidence, and documents information needed for a thorough review. This inquiry not only ensures that CBP has exercised due diligence on behalf of the individuals held in custody, but also institutes a constant assessment for accountability of CBP and involved officers/agents in such cases.

OPR will ensure notification is made to the OIG, which may subsequently investigate the facts and circumstances surrounding the death of the detainee. In cases where OIG accepts the investigation, OPR will offer and provide assistance, when accepted. If OIG declines the case, OPR will continue the inquiry.

In ensuring proper review and oversight of all CBP custody deaths, OPR will conduct an objective analysis of the facts and circumstances surrounding the death. The review will substantiate whether CBP employee(s) and/or contractor(s) fully complied with CBP custody

and detention standards, specifically as applicable to the detainee's healthcare and security. Findings from the review of the death or serious injury of an individual in CBP custody will be consolidated in a detailed report, consisting of an investigative narrative of the events and identified areas of noncompliance. If the OPR review indicates any CBP employee violated policy, engaged in misconduct or criminal act, OPR will launch a comprehensive investigation.

Deaths in Custody Fiscal Year 2017

Four (4) deaths while in Border Patrol custody:

- Cause of Death-Cardiac Arrest – 3
- Cause of Death-Unknown/Medical – 1

Decedent Age	Location	Details / Cause of Death (if known)
45	McAllen Station, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 12/2016</p> <p>Subject suffered a seizure upon arrival at a Border Patrol station. Agents and onsite medical staff performed CPR. The subject later died at the hospital.</p> <p>Cause of Death: Seizure / Unknown/Medical</p>
34	Weslaco, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 12/2016</p> <p>Following the arrest, subject requested medical assistance. The subject was transported to the hospital for evaluation and treatment. The subject later died at the hospital.</p> <p>Cause of Death: Cardiac Arrest</p>
43	La Joya, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 11/2016</p> <p>Border Patrol responded to a request for assistance from local law enforcement and encountered an unresponsive subject. The subject was transported to the hospital and admitted for evaluation for a possible stroke. The subject later died at the hospital.</p> <p>Cause of Death: Cardiac Arrest</p>

Decedent Age	Location	Details / Cause of Death (if known)
37	La Joya, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 10/2016</p> <p>Border Patrol responded to a call for assistance and encountered a subject who claimed to have been assaulted and complained of a head injury. The subject was airlifted and admitted to the hospital for treatment. The subject died at the hospital.</p> <p>Cause of Death: Cardiac Arrest</p>

Deaths in Custody Fiscal Year 2018

Six (6) deaths while in USBP custody:

- Cause of Death-Cardiac Arrest – 2
- Cause of Death-Suicide – 2
- Cause of Death-Respiratory – 1
- Cause of Death- Dehydration/Heat Related - 1

USBP encountered 12 individuals exhibiting distress that concluded with the death of the individuals in distress:

- Cause of Death-Cardiac Arrest – 3
- Cause of Death-Dehydration/Heat Related – 3
- Cause of Death-Hypothermia – 1
- Cause of Death-Unknown/Medical – 5

Decedent Age	Location	Details / Cause of Death (if known)
42	Yuma Station, AZ	<p>Component: Border Patrol Action: Distress Call Month/Year: 09/2018</p> <p>Border Patrol responded to a distress call regarding a subject in need of medical assistance. The subject was transported to the hospital where the subject later died.</p> <p>Cause of Death: Cardiac Arrest</p>

Decedent Age	Location	Details / Cause of Death (if known)
39	El Centro Station, CA	<p>Component: Border Patrol Action: Distress Encounter Month/Year: 09/2018</p> <p>Border Patrol responded to a sensor activation and encountered a subject who appeared to be severely dehydrated and unable to walk. An air extraction was requested. The subject became unresponsive and died before the airlift arrived.</p> <p>Cause of Death: Exhibited signs of dehydration in the field. Succumbed to a heat related illness.</p>
20	Three Points Sub-Station, AZ	<p>Component: Border Patrol Action: Distress Call Month/Year: 08/2018</p> <p>Border Patrol responded to a 911 call for assistance regarding a subject in distress. Border Patrol located the subject, who was unresponsive with shallow breathing. The subject was airlifted to the hospital where the subject later died.</p> <p>Cause of Death: Succumbed to a heat related illness.</p>
33	Eagle Pass Station, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 07/2018</p> <p>At the time of apprehension, the subject complained of ankle pain related to jumping from a train the previous day. The subject was transported to the hospital for treatment. The subject died at the hospital several days later due to complications from surgery.</p> <p>Cause of Death: Cardiac Arrest</p>
43	Laredo South Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 07/2018</p> <p>Border Patrol responded to a request for assistance and, with the assistance of air support, located an unresponsive subject. Border Patrol agents performed CPR on the subject, however, the subject died shortly thereafter.</p> <p>Cause of Death: Unknown/Medical</p>

Decedent Age	Location	Details / Cause of Death (if known)
24	Laredo West Station, TX	<p>Component: Border Patrol Action: Distress Encounter Month/Year: 07/2018</p> <p>Border Patrol encountered an unresponsive subject along the side of a rural highway. The subject was transported to the hospital where he was pronounced dead.</p> <p>Cause of Death: Unknown/Medical</p>
39	McAllen Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 07/2018</p> <p>Border Patrol responded to a distress call for two lost subjects (an adult and child). Upon locating the subjects, the adult was exhibiting signs of cardiac arrest. The adult subject was transported to the hospital where he was later pronounced dead.</p> <p>Cause of Death: Cardiac Arrest</p>
30	Brownsville Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 07/2018</p> <p>Border Patrol responded to call from a rancher citing a person was in distress on the rancher's property. Border Patrol located the subject and called for an ambulance. The subject was transported to the hospital where the subject was later pronounced dead.</p> <p>Cause of Death: Cardiac Arrest</p>
38	Laredo West Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 06/2018</p> <p>Border Patrol rescued four subjects. One of the subjects began to have convulsions and was subsequently transported to a location for life flight. Although CPR was performed by life flight personnel, the subject succumbed to the illness.</p> <p>Cause of Death: Unknown/Medical</p>

Decedent Age	Location	Details / Cause of Death (if known)
40	Santa Teresa Station, NM	<p>Component: Border Patrol Action: Arrest Month/Year: 07/2018</p> <p>Border Patrol apprehended three subjects. While walking toward the patrol vehicles, one of the subjects complained of difficulty breathing. An ambulance was summoned. While awaiting the ambulance, the subject stopped breathing and Border Patrol performed CPR with success. The subject was transported to the hospital where the subject died the following day.</p> <p>Cause of Death: Cardiac Arrest</p>
22	Falfurrias Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 06/2018</p> <p>Border Patrol responded to a request from local law enforcement regarding two lost subjects requiring assistance. The Border Patrol located the two subjects, however one was unresponsive at the scene. On scene, Emergency Medical Service personnel determined the subject was deceased.</p> <p>Cause of Death: Unknown/Medical</p>
47	Casa Grande Station, AZ	<p>Component: Border Patrol Action: Arrest Month/Year: 06/2018</p> <p>Border Patrol apprehended five subjects. One of the subjects appeared to be suffering from a heat related illness and requested medical attention. An ambulance responded to the scene to transport the subject to the hospital. The subject succumbed to the illness en route to the hospital.</p> <p>Cause of Death: Heat related illness.</p>
49	Carrizo Springs Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 06/2018</p> <p>Border Patrol responded to a request for assistance regarding an unresponsive person lying near a ranch road. Border Patrol located the unresponsive subject. An ambulance was also dispatched and the subject was transported to the hospital in critical condition. The subject died at the hospital.</p> <p>Cause of Death: Unknown/Medical</p>

Decedent Age	Location	Details / Cause of Death (if known)
39	Weslaco Station, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 05/2018</p> <p>Subject was arrested by Border Patrol and committed suicide two days later while being held at a county jail.</p> <p>Cause of Death: Suicide</p>
18	Ajo Station, AZ	<p>Component: Border Patrol Action: Arrest Month/Year: 04/2018</p> <p>Border Patrol apprehended a group of six subjects. One of the subjects exhibited shortness of breath. Border Patrol requested medical support and subsequently requested an air evacuation. Air evacuation personnel arrived and pronounced the subject dead at the scene.</p> <p>Cause of Death: Succumbed to a respiratory related illness.</p>
27	Laredo West Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 03/2018</p> <p>Border Patrol rescued two subjects. One of the subjects succumbed to a heat related illness while being transported by Life Flight.</p> <p>Cause of Death: Heat related illness.</p>
Unknown	Kingsville Station, TX	<p>Component: Border Patrol Action: Distress Call Month/Year: 12/2017</p> <p>Border Patrol responded to a distress call regarding a subject in distress near the roadway. Border Patrol located the subject who was disoriented and appeared to be suffering from hypothermia. Border Patrol provided CPR to the unresponsive subject, reviving the subject twice. Border Patrol was continuing CPR when the subject was loaded into an ambulance. The subject was pronounced dead at the hospital.</p> <p>Cause of Death: Hypothermia</p>

Decedent Age	Location	Details / Cause of Death (if known)
34	McAllen, TX	<p>Component: Border Patrol Action: Arrest Month/Year: 07/2018</p> <p>Subject was arrested by Border Patrol and later committed suicide while being held at a U.S. Marshal Service Facility.</p> <p>Cause of Death: Suicide</p>

The fatal use of force incidents involving CBP employees have been investigated by external federal agencies including the Federal Bureau of Investigation (FBI), and the DHS OIG, or state or local authorities with primary jurisdiction.

A CBP working group headed by OPR, and including representatives from the USBP, AMO, OFO, and Office of Chief Counsel, developed a robust investigative format modeled after the FBI inspections program. CBP deploys teams that are comprised of OPR, OFO, U.S. Border Patrol and Air and Marine Operations to investigate use-of-force incidents involving serious injury or death or, alternatively, assist the external federal, state or local agencies which assert primary investigative jurisdiction. The Use of Force Incident Team (UFIT) ensures matters specifically related to CBP's Use of Force Policy are properly addressed by investigators during the course of the incident investigation.

Federal or local prosecutors then review the investigative findings to determine if criminal prosecution is warranted. The investigative findings are presented to the National Use of Force Review Board (NUFRB). If criminal prosecution is declined, the case reverts to CBP for appropriate administrative review and action. The NUFRB is comprised of senior officials from CBP's operational, legal, scientific, and training offices, as well as officials from the DHS OIG, the DHS Office for Civil Rights and Civil Liberties, the U.S. Immigration and Customs Enforcement Office of Professional Responsibility, and the Department of Justice Civil Rights Division. Through this review process, CBP strives to improve accountability and transparency of use-of-force incidents.

Fiscal Year 2017: Use of Force

Of the four deaths that occurred between October 1, 2016 and September 30, 2017, all were investigated by CBP UFIT. All four were the result of use of force by CBP law enforcement personnel, and all involved firearms. Three were on-duty incidents and one was off-duty.

Breakdown of the four use of force cases:

- Pending prosecutorial determination – 3
- Presented to the NUFRB and pending final administrative disposition – 1

Fiscal Year 2018: Use of Force

Of the four deaths that occurred between October 1, 2017 and September 30, 2018, all were investigated by CBP UFIT. All four were the result of use of force by CBP law enforcement personnel, and all involved firearms. Two were on-duty incidents and two were off-duty.

Breakdown of the four use of force cases:

- Pending prosecutorial determination – 3
- Closed – UFITS case closed, referred to OPR for further investigation – 1

III. Conclusion

CBP has implemented the UFIT and NUFRB to improve the investigative and review process for use-of-force incidents. The UFIT ensures that a standardized investigative product is produced and reviewed in a timely manner. As a result of the UFIT and NUFRB process, CBP will benefit from enhanced accountability and transparency leading to a more professional approach to policing in the 21st century. The inclusive philosophy of the NUFRB, by inviting representatives from outside agencies to participate, makes the review process more rigorous and transparent. This openness and standardization will improve CBP operations, and strengthen CBP's relationship with its stakeholders and the public.

Similarly, CBP has implemented agency-wide policy that sets forth nationwide standards governing CBP's interaction with detained individuals. The policy emphasizes CBP's commitment to the safety, security and care of those in our custody. The policy is grounded firmly in the experience and policies of the OFO and the United States Border Patrol. It incorporates best practices developed in the field, and reflects key legal and regulatory requirements. In addition to transport, escort, detention and search provisions, the policy also includes requirements related to sexual abuse and assault prevention and response; care of at-risk individuals; and personal property.

IV. Appendix – List of Acronyms

Acronym	Definition
AMO	Air and Marine Operations
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FY	Fiscal Year
NUFRB	National Use of Force Review Board
OFO	Office of Field Operations
OPR	Office of Professional Responsibility
UFIT	Use of Force Incident Team
USBP	U.S. Border Patrol